

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOANNE WITCHKO, Derivatively on Behalf of Nominal :
Defendant AMERICAN REALTY CAPITAL :
PROPERTIES, INC., : Lead Case No. 15-CV-6043-
Plaintiff, : AKH
vs. : (Consolidated With Case No.
15-cv-8563-AKH)
NICHOLAS S. SCHORSCH, DAVID KAY, LESLIE D. :
MICHELSON, EDWARD G. RENDELL, WILLIAM G. :
STANLEY, THOMAS A. ANDRUSKEVICH, BRUCE :
FRANK, SCOTT BOWMAN, WILLIAM KAHANE, :
EDWARD M. WEIL, JR., BRIAN BLOCK, LISA :
MCALISTER and LISA BEESON, :
Defendants, :
-and- :
AMERICAN REALTY CAPITAL PROPERTIES, INC., :
Nominal Defendant. :
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NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, the Declaration of Stephen A. Radin and the exhibits attached thereto, and all prior papers and proceedings herein, Nominal Defendant American Realty Capital Properties, Inc. (“ARCP”), now known as VEREIT, Inc. (with respect to Point I of the accompanying memorandum), and Defendants Thomas A. Andruskevich, Scott Bowman, Bruce D. Frank, Leslie D. Michelson, Edward G. Rendell and William G. Stanley (with respect to Points I, II A and II B 1 of the accompanying memorandum), William Kahane and Edward M. Weil., Jr. (with respect to Points I, II A and II B 2 of the accompanying memorandum), David Kay (with respect to Points I, II A and II B 3 of the accompanying memorandum), Lisa Beeson (with respect to Points I, II A and II

B 4 of the accompanying memorandum), Nicholas S. Schorsch (with respect to Points I, II A 2, II B 1 b and II B 5 of the accompanying memorandum), Brian Block (with respect to Points I, II A and II B 6 of the accompanying memorandum), and Lisa McAlister (with respect to Points I, II A and II B 7 of the accompanying memorandum), will move this Court, before the Honorable Alvin K. Hellerstein, United States District Judge, United States District Court for the Southern District of New York, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, on a date and at a time to be set by the Court, for an Order dismissing the complaint pursuant to Fed. R. Civ. P. 23.1 and 12(b)(6), and for such other relief as this Court may deem just and proper.

Pursuant to the Court's instructions at the December 15, 2015 status conference, ARCP and defendants are filing a single brief to address all arguments for dismissal under both Fed. R. Civ. P. 23.1 and 12(b)(6). Pursuant to the Court's February 2, 2016 Order, answering papers are required to be filed on or before March 15, 2016 and reply papers are required to be filed on or before April 5, 2016.

Dated: New York, New York
February 12, 2016

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